

No. 12047

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EARLE C. ANTHONY, INC.,

Appellant,

vs.

KENNETH E. MORRISON and THE VOICE OF
THE ORANGE EMPIRE, INC., LTD.,

Appellees.

TRANSCRIPT OF RECORD

Appeal From the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	Page
Appeal:	
Designation of Record on (Court of Appeals).....	23
Notice of	20
Statement of Points Upon Which Appellant Intends to Rely and Designation of the Record Necessary for Consideration of Such Points (Court of Appeals).....	22
Appearance on Motion to Dismiss.....	14
Certificate of Clerk.....	21
Complaint for Damages.....	2
Designation of Record on Appeal (Court of Appeals)	23
Judgment of Dismissal for Lack of Jurisdiction.....	19
Memorandum Opinion	15
Motion to Dismiss.....	13
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	20
Opinion, Memorandum	15
Statement of Points Upon Which Appellant Intends to Rely and Designation of the Record Necessary for Consideration of Such Points (Court of Appeals)	22

NAMES AND ADDRESSES OF ATTORNEYS:

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For Appellee The Voice of the Orange Empire, Inc., Ltd.:
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OTTO A. JACOBS

10 Bank of America Building
Santa Ana, Calif. [1*]

District Court of the United States
 Southern District of California
 Central Division

Civil No. 8198-BH

EARLE C. ANTHONY, INC.,

Plaintiff,

vs.

KENNETH E. MORRISON and THE VOICE OF
 THE ORANGE EMPIRE, INC., LTD., a cor-
 poration,

Defendants.

COMPLAINT FOR DAMAGES

\$150,000.00

The Plaintiff, Earle C. Anthony, Inc., complains of the Defendants and for cause of action alléges:

I.

This action is of a civil nature and arises under the First Amendment to the Constitution of the United States; the Fourteen Amendment to the Constitution of the United States, Sections 1 and 5; Article I, Section 8, Cl. 1, 3 and 18, of the Constitution of the United States; Act 1870, 14 Stat. 27 (as amend.), U. S. C. A., Title 8, Sec. 41; the Act of 1871, 17 Stat. 13, U. S. C. A., Title 8, Secs. 43 and 47 (3); the Act of 1875, 18 Stat. 470 (as amend.), U. S. C. A., Title 28, Sec. 41 (1); and Act 1911, 36 Stat. 1092 (as amend.), U. S. C. A., Title 28, Secs. 41 (8), (12), (13) and (14) as hereinafter more fully appears and the amount in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00). [2]

II.

At all times herein mentioned Plaintiff, Earle C. Anthony, Inc., was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California and the owner and operator of a radio broadcasting station in the City of Los Angeles, State of California, with its transmitter located in Orange County, California, pursuant to a license granted in that behalf by the Federal Communications Commission. Said broadcasting station is known by its call letters K.F.I. Plaintiff has invested in station KFI and its facilities sums of money in excess of \$1,500,000.00 and has during the past twenty-five years built up one of the largest, most numerous and most extensive listening publics of any radio station in the western states of the United States. Plaintiff is engaged in radio broadcasting for profit. Plaintiff's radio station has a transmission power of 50 kilowatts, and its radio broadcast programs are heard in Arizona, Nevada and other Western states of the United States and in Mexico, and by reason thereof Plaintiff in its radio business is engaged in interstate and foreign commerce. For convenience of reference, Plaintiff is sometimes hereinafter referred to as KFI.

III.

At all times herein mentioned Defendant, Kenneth E. Morrison, was, and now is, a Judge of the Superior Court of the State of California in and for the County of Orange. Defendant resides in the County of Orange, State of California.

IV.

Plaintiff is informed and believes and therefore alleges that at all times herein mentioned Defendant, the Voice

of the Orange Empire Inc., Ltd., hereinafter called KVOE, was, and now is, a corporation organized and existing under and by virtue of the laws of the State of California and is the owner and operator of [3] a radio broadcasting station located in the City of Santa Ana, County of Orange, State of California, with its transmitter located in Orange County, California, pursuant to a license granted in that behalf by the Federal Communications Commission, which broadcasting station is known by its call letters KVOE.

V.

Stations KFI and KVOE each broadcast news, entertainment, educational and similar type programs and are competitors in the field of intrastate, interstate and foreign radio broadcasting. The chief asset of each of said stations is its listening audience good will and each station endeavors to secure as large a listening audience as possible. One of the means of attracting a listening radio audience is the broadcast of news flashes of current events of a general public interest, promptly and accurately. KFI has always and consistently endeavored to establish in its listening audience confidence in the fact that if a listener will remain tuned to KFI such listener can anticipate that if there is a news event of wide public interest, almost immediately after the happening of such event there will be a radio news "flash" reporting said event broadcast over KFI, and that such a flash will be both current and accurate. Through its twenty-five years of broadcasting KFI has successfully established a reputation for prompt and accurate news reporting. The amount of income realized by stations KFI and KVOE from the operation of their respective radio stations is essentially conditioned upon the numerical size

of their respective listening audiences and the degree of success of KFI in attracting and maintaining a listening audience is in a large measure proportional to its successful competition with the defendant station as well as other competitors in the field of radio broadcasting. The amount of income derived by KFI has a direct ratio to the relative size of KFI's listening audience as compared with its competitors. [4]

VI.

During the year of 1947 widespread public interest developed as to the cause or causes of the deaths of Walter E. Overell and Buelah A. Overell, husband and wife, who were killed aboard their yacht in the harbor at Newport Beach, California, on or about March 15, 1947. There was wide speculation and conjecture between various members of the press and radio, between State authorities and private individuals, on this subject. Public interest was stimulated by an apparent controversy between different State and County officials charged with the investigation and prosecution of crime in the State of California. Public interest was further stimulated when Louise Overell, the daughter of the said decedents, and George R. Gollum, also known as Bud Gollum, were charged with the murder of said decedents. Louise Overell and George R. Gollum were subsequently tried for said alleged murders in Santa Ana, California, in the Superior Court of the State of California in and for the County of Orange, by a jury before and in the Court of Defendant, Kenneth E. Morrison. The trial which commenced on May 26, 1947, lasted in excess of nineteen weeks and the course and developments of the trial were summarized daily and were reported at great length and in detail in the press and on the radio and were closely

followed by the general public throughout the United States and particularly in the western states of the United States, receiving great public attention and interest.

VII.

Defendant KVOE was given permission by Defendant Kenneth E. Morrison, acting as Judge of said Superior Court, to locate a microphone in the courtroom of his said court and to broadcast the trial from the courtroom, and did for nineteen weeks during the progress thereof broadcast the daily events of the trial. Said Defendant Kenneth E. Morrison also granted to Defendant KVOE [5] permission to broadcast the jury's verdict from said courtroom when read by the foreman at the conclusion of said trial.

VIII.

By October 4, 1947, the case had been submitted to the jury for its verdict. On said day KFI made several announcements to its listeners that it would provide "on the spot" coverage and would broadcast the results of the verdict through its facilities to be located at Santa Ana, California, as soon as it was read. Pursuant to the foregoing announcement KFI dispatched a sound truck, a news reporter and radio engineers to Santa Ana for the purpose of transmitting by radio the jury's verdict to its broadcasting station in Los Angeles. KFI's news reporter, on arriving in Santa Ana, California, requested of Defendant Kenneth E. Morrison, as Judge of the said Superior Court, that he grant permission to KFI to broadcast the verdict from his said courtroom on the same terms and conditions that he was granting this permission to station KVOE. Defendant Kenneth E. Morrison arbitrarily and capriciously refused to grant

KFI the same rights to broadcast from said courtroom that he was granting to KVOE and willfully, intentionally, invidiously and purposefully denied to KFI this equal protection and application of the law requested by KFI, and then and there stated to said reporter that he, Kenneth E. Morrison, as Judge of said Superior Court was granting this permission exclusively to KVOE. Said action and denial by said Defendant deprived KFI of, and prevented it from exercising and availing itself of, its property and its constitutional rights.

IX.

Defendant Kenneth E. Morrison justified his refusal to said KFI reporter on the basis that as a Judge, he had authority to control his courtroom and that he could deny to KFI the right to broadcast and could grant the right to any other station that he saw fit. Station KFI renewed its said request to Defendant [6] Kenneth E. Morrison for equal broadcasting rights with KVOE to broadcast the verdict from the courtroom on three separate occasions before the verdict of the jury was read on October 5, 1947, but Defendant Kenneth E. Morrison refused and continued to refuse to KFI the same rights to broadcast from the courtroom that he was giving to Defendant KVOE. The verdict was read on October 5, 1947, in the courtroom of Kenneth E. Morrison, and Defendant KVOE, pursuant to the permission granted it by Defendant Kenneth E. Morrison, did broadcast the verdict to the public at large from the courtroom. Defendant Kenneth E. Morrison's acts were done under the color of state law, custom and usage and his acts willfully, intentionally, invidiously and purposefully denied to KFI the equal protection of the laws, of its property without due process of law, of the right to the freedom of

press and its right to engage in interstate and foreign commerce as guaranteed to it by the Constitution of the United States. KFI had done nothing that would justify Defendant Kenneth E. Morrison to believe that if admitted to his said courtroom it would create a disturbance or do any act or acts that would interfere with the orderly conduct of the trial. In this connection KFI requested of said Defendants Kenneth E. Morrison and KVOE permission to connect its microphone into the wires connecting that of KVOE, which would have been done outside the courtroom and would have eliminated the necessity of KFI's microphone being brought into the courtroom, which permission was denied by said Defendants Kenneth E. Morrison and KVOE without right.

X.

Upon being advised by Defendant Kenneth E. Morrison that KFI would not receive the same rights and privileges extended to KVOE with reference to the broadcast of the verdict, KFI requested of Kenneth E. Morrison as an alternative, that it be allowed to broadcast the verdict from a location approximately 300 feet from [7] the courtroom on a bridge connecting the Court House to an adjacent building. Defendant Kenneth E. Morrison advised KFI that that location was entirely without his jurisdiction and that so far as he was concerned the broadcast could be made from this bridge. Pursuant to the foregoing authority and with the express approval of the custodian of the Court House building, KFI set up its microphone on the bridge and made all necessary hookups with its sound truck to broadcast said verdict to its broadcasting station in Los Angeles. Approximately simultaneously with the reading of the verdict one Robert Carlton, a Court House janitor, acting

under the express orders of Defendant Kenneth E. Morrison, as said Judge of the Superior Court, seized possession of the microphone on the bridge, thereby preventing KFI from making this broadcast, and with the aid of two deputy sheriffs placed Plaintiff's engineer, who was in charge of the microphone, in restraint.

XI.

In addition to the special and exclusive rights granted to station KVOE, Defendant Kenneth E. Morrison granted special and exclusive permission to Station of the Stars, Inc., which corporation operates a radio station in Los Angeles County, California, using the call letters KMPC, to locate its broadcasting facilities in the chambers of Defendant Kenneth E. Morrison adjoining the courtroom and to connect said facilities with those of Defendant KVOE which had been set up in the courtroom of Defendant Kenneth E. Morrison, thereby enabling Station of the Stars, Inc. to relay the KVOE broadcast to its audience pursuant to an agreement between it and KVOE. Station of the Stars, Inc. is for convenience sometimes hereinafter referred to as KMPC.

XII.

By this suit and proceedings, Plaintiff, KFI, seeks to redress the deprivation by Defendants Kenneth E. Morrison and KVOE, under color of statute, regulation, custom and usage, of [8] Plaintiff's rights, privileges and immunities secured to it by the laws of the United States and guaranteed to it by the Constitution of the United States.

XIII.

These arbitrary and discriminatory acts of Defendant Kenneth E. Morrison were willfully, intentionally, invidiously and purposefully calculated to and did give to Defendant KVOE and KMPC a preferred position with reference to the coverage of the trial so as to enable Defendant KVOE and KMPC to scoop KFI on the broadcast of the jury's verdict. Said arbitrary and discriminatory acts of Defendant Kenneth E. Morrison were designed to and did deny to KFI its right to the equal protection of the law, to deprive KFI of its property without due process, and to deny to KFI the freedom of the press and its rights to engage in interstate and foreign commerce, all to its damage in the sum of \$150,000.00.

As and for a Second and Separate Cause of Action, Plaintiff Alleges as Follows:

I.

Plaintiff refers to the allegations set forth in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI and XIII of its first cause of action and by this reference makes the same a part hereof as though set forth in full.

II.

During the pendency of said Overell trial and before the jury had returned its verdict, KFI requested on several occasions of Defendant Kenneth E. Morrison the same broadcasting privilege as given to Defendant KVOE to broadcast the verdict from the courtroom and requested equal rights with KVOE to make this broadcast from the courtroom. Defendant Kenneth E. Morrison willfully, intentionally, invidiously and purposefully refused to KFI these same rights that he was extending as Judge of the said Superior Court to Defendant KVOE and

granted as an alternative to the [9] rights and privileges granted to KVOE the right to make the broadcast providing consent was first obtained from KVOE. KFI on several occasions prior to the reading of said verdict requested Defendant KVOE to relinquish the exclusive rights and privileges being granted to it by Defendant Kenneth E. Morrison. Defendant KVOE, exercising the power of exclusion granted to it by Defendant Kenneth E. Morrison as Judge of the Superior Court willfully, intentionally, invidiously and purposefully refused to allow KFI to make the broadcast from the courtroom or to connect with its transmission line outside of the courtroom. Said Defendants Kenneth E. Morrison and KVOE jointly and severally continued to refuse to KFI the equal right with KVOE to broadcast from the courtroom. Plaintiff is informed and believes and on information and belief alleges that Defendants Kenneth E. Morrison and KVOE willfully, intentionally, invidiously and purposefully conspired to deprive and did deprive KFI of its right to freedom of the press, equal protection of the laws, its property without due process of law and its right to engage in interstate and foreign commerce as guaranteed to it by the Constitution of the United States.

III.

Plaintiff is informed and believes and on information and belief alleges that Defendant, KVOE, with the consent and approval of Defendant Kenneth E. Morrison did authorize KMPC to set up its equipment in the chambers of defendant Kenneth E. Morrison, which are immediately adjacent to the courtroom, and permitted KMPC to instantaneously relay the KMPC courtroom broadcast to the news room of KMPC, and that when the verdict was read Defendants KVOE and KMPC by virtue of

the foregoing arrangement were able to and did simultaneously broadcast the verdict over their stations. Defendants KVOE and KMPC were thereby able to advertise and did advertise that they were making and had the only right to make the exclusive broadcast of the jury's verdict from the courtroom of [10] Defendant Kenneth E. Morrison. Thus Defendant KVOE was able to capitalize and did capitalize on the benefits derived as a result of the conspiracy to deprive KFI of an equal right to broadcast to the public at large.

IV.

The direct and intentional result of the willful, intentional, invidious and purposeful conspiracy of Defendants Kenneth E. Morrison and KVOE was to deny to KFI its right to freedom of press, the equal protection of the law, its property without due process of law, and its right to engage in interstate and foreign commerce, causing KFI to suffer damage to its good will, to lose the confidence of its listening public and other damages, all to its detriment in the sum of \$150,000.00.

Wherefore, Plaintiff prays judgment against the Defendants and each of them in the sum of \$150,000.00, and for such other and further relief as may be just.

OVERTON, LYMAN, PLUMB, PRINCE
& VERMILLE

EUGENE OVERTON

DONALD H. FORD

Eugene Overton

Attorneys for Plaintiff [11]

[Verified.]

[Endorsed]: Filed May 11, 1948. Edmund L. Smith,
Clerk. [12]

[Title of District Court and Cause]

NOTICE OF MOTION TO DISMISS

- (1) For Failure to State a Claim Upon Which Relief Can Be Granted, and
- (2) For Lack of Jurisdiction

To the Plaintiff Above Named and to Overton, Lyman, Plumb, Prince & Vermille, 735 Roosevelt Building, Los Angeles 14, California, Its Attorneys; and to Whomsoever It May Concern:

You and Each of You Will Please Take Notice that The Voice of the Orange Empire Inc., Ltd., a California corporation, will on Monday, June 28th, 1948, at 10:00 o'clock a. m. of said day, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Ben Harrison, Judge of the above named Court, in the Federal Building, Los Angeles, California, move the above named Court for an order dismissing the Complaint on file herein, as to the Defendant, The Voice of the Orange Empire Inc., Ltd., a corporation, and for an order dismissing the above entitled action as to the Defendant, The Voice of the Orange Empire Inc., Ltd., a corporation. [13]

Said motions will be made upon the following grounds:

1. That the Complaint fails to state a claim upon which relief can be granted as against the Defendant, The Voice of the Orange Empire Inc., Ltd., a corporation.

2. That the Court has no jurisdiction to enforce the liability alleged in the Complaint as against the Defendant, The Voice of the Orange Empire Inc., Ltd., a corporation.

Said motions will be based upon (a) the Plaintiff's Complaint entitled "Complaint for Damages \$150,000.00", and (b) the Memorandum of Points and Authorities served and filed herewith.

R. M. CROOKSHANK

Attorney for Defendant, The Voice of the Orange Empire Inc., Ltd. [14]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 11, 1948. Edmund L. Smith, Clerk. [15]

[Title of District Court and Cause]

APPEARANCE ON MOTION TO DISMISS

To the Plaintiff Above Named and to Overton, Lyman, Plumb, Prince & Vermille, Its Attorneys:

You and Each of You Will Please Take Notice that pursuant to authority heretofore granted by the court, the defendant Kenneth E. Morrison does hereby join with the defendant The Voice of the Orange Empire, Inc., Ltd., a corporation, in its motion to dismiss the complaint of the plaintiff and upon the grounds stated in said motion.

Pursuant to said permission, defendant Kenneth E. Morrison serves and files herewith his memorandum of points and authorities.

OTTO A. JACOBS

Attorney for Defendant Kenneth E. Morrison [16]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 8, 1948. Edmund L. Smith, Clerk. [17]

[Title of District Court and Cause]

MEMORANDUM OPINION

In this action plaintiff seeks to recover damages for infringement of its civil rights in violation of the Fourteenth Amendment and 8 U. S. C. A., Sections 43 and 47. Defendants have moved to dismiss the complaint on two grounds, namely, (1) for failure to state a claim upon which relief can be granted and (2) for lack of jurisdiction.

The complaint in substance alleges that the defendant Morrison as presiding judge during a sensational murder trial conducted in Orange County permitted the defendant broadcasting company to broadcast the trial from his courtroom during its progress, but denied the same privilege to the plaintiff broadcasting company, all to its damage in the sum of \$150,000.00.

The plaintiff contends that the issue in this case is: "Has a Judge of a court, while acting in his official capacity as such, [18] the right to grant special privileges in his courtroom to one news gathering agency to the exclusion of the others?"

To me the issue is: Does such action present a Federal question? I think not.

Plaintiff admits in its brief that there is no legal right (at least in the year 1948) permitting broadcasting from a courtroom during the course of a trial, but contends that once the defendant judge permitted the defendant broadcasting company that privilege, the denial of the same privilege to the plaintiff was a denial of its civil rights, thereby enabling it to seek redress in this court.

It is my understanding that only rights or privileges granted, secured or protected by the Federal Constitution and laws of the United States can be made the basis of an action under the Civil Rights Statutes. *Mitchell v. Greenough*, 100 F. (2d) 184-5 (9th Cir.), and cases therein cited. No such right is disclosed in the pleadings or cited by counsel.

Plaintiff states in its brief: "Obviously, no Judge should permit his courtroom to be filled with innumerable microphones, technicians and wires; in fact the writer of this memorandum believes microphones, photo-flash lights, etc., should not be allowed in a courtroom. But once a Judge opens his courtroom to radio broadcasting, it is our contention that he, as a representative of the State, is obligated to see that no one gets a special privilege, a valuable property right, not open to everyone similarly situated. Above all officials, Judges are charged with the duty to act fairly and impartially."

To follow plaintiff's argument to its natural conclusion, it is its theory that the defendant Morrison did something which he should not have done but as long as he did it, the plaintiff had a vested right in having the wrong repeated.

In *Love v. Chandler*, 124 F. (2d) 785-786 (8th Cir.), the court said: [19]

"The statutes, while they granted protection to persons from conspiracies to deprive them of the rights secured by the Constitution and laws of the United States (*United States v. Mosley*, 238 U. S. 383, 387, 388, 35 S. Ct. 904, 59 L. Ed. 1355), did not have the effect of taking into federal control the protection of private rights against invasion by individuals. *Hodges v. United States*, 203 U. S. 1, 14-20, 27 S.

Ct. 6, 51 L. Ed. 65; *Logan v. United States*, 144 U. S. 263, 282-293, 12 S. Ct. 617, 36 L. Ed. 429. The protection of such rights and redress for such wrongs was left with the States.”

The following language is used in *Snowden v. Hughes*, 321 U. S. 1, 11-12:

“It was not intended by the Fourteenth Amendment and the Civil Rights Acts that all matters formerly within the exclusive cognizance of the states should become matters of national concern.

A construction of the equal protection clause which would find a violation of federal right in every departure by state officers from state law is not to be favored.”

In the same case Mr. Justice Frankfurter in his concurring opinion summed up the present problem when he stated:

“It is not to be resolved by abstract considerations such as the fact that every official who purports to wield power conferred by a state is pro tanto the state. Otherwise every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court.”

For a further discussion of rights protected under our Civil Rights Statutes see 11 C. J., p. 802; 14 C. J. S. 1161; The Civil Rights cases, 109 U. S. 3, 3 S. Ct. 18; *U. S. v. Classic*, 313 U. S. 299; 40 Harvard Law Review 969.

Under the law of California, the defendant Morrison had control of his courtroom and it was a matter of discretion whether he would permit any broadcasting from

his courtroom. Under such discretion he could extend permission to one, ten or one hundred broadcasting stations and I cannot see by any stretch of the imagination wherein even an abuse of discretion can be made the basis of an action of which the Federal judiciary has any jurisdiction. I cannot see under what authority a Federal court can step in and control who shall or shall not [20] be permitted to broadcast from the courtroom of a State court. If the practice of law is not a privilege granted by the Federal court or laws, how can it be construed that the right to broadcast from a courtroom is a privilege granted under the supreme law of the land? *Mitchell v. Greenough*, 100 F. (2d) 184-5.

I realize the Civil Rights Statutes are very flexible and must be used and applied to meet changing conditions. It may be, some day, that broadcasting and television may be considered a vested right of news gathering agencies but the flexibility of my mind cannot comprehend that such unusual privileges have thus far jelled into a right.

It is my opinion that the plaintiff has failed to state a cause of action over which this court can entertain jurisdiction.

Defendants are entitled to judgment of dismissal.

Dated: This 19 day of July, 1948.

BEN HARRISON

Judge

[Endorsed]: Filed Jul. 19, 1948. Edmund L. Smith, Clerk. [21]

In the United States District Court
Southern District of California
Central Division

No. 8198-BH Civil

EARLE C. ANTHONY, INC.,

Plaintiff,

vs.

KENNETH E. MORRISON and THE VOICE OF
THE ORANGE EMPIRE, INC., LTD., a corpo-
ration,

Defendants.

JUDGMENT OF DISMISSAL FOR LACK OF
JURISDICTION

On the 28th day of June, 1948, this cause came before the court for hearing of Motion to Dismiss by defendant, The Voice of the Orange Empire, Inc., Ltd., and Eugene Overton, Esq. and D. H. Ford, Esq. appeared as counsel for the plaintiff, and R. M. Crookshank, Esq. appeared as counsel for said defendant, and Otto A. Jacobs, Esq. appeared as counsel for the defendant, Kenneth E. Morrison; and on motion, the defendant Morrison was granted permission to join with the defendant The Voice of the Orange Empire, Inc., Ltd., a corporation, in its said Motion to Dismiss the complaint and upon the grounds stated in said motion; and said motion to dismiss having been argued by counsel, was ordered submitted upon the filing of briefs.

Briefs of counsel having been filed, and the court having duly considered the complaint, motion to dismiss, briefs of counsel, and the law applicable, and on the 19th day of July, 1948, signed and ordered filed its Memorandum Opinion and order for judgment of dismissal.

It Is, Therefore, Ordered, Adjudged and Decreed that this cause be, and it is hereby, dismissed for lack of jurisdiction.

Dated: Los Angeles, California, July 30, 1948.

BEN HARRISON

U. S. District Judge

Judgment entered Jul. 30, 1948. Docketed Jul. 30, 1948. Book 52, page 349. Edmund L. Smith, Clerk; by C. A. Simmons, Deputy.

[Endorsed]: Filed Jul. 30, 1948. Edmund L. Smith, Clerk. [22]

[Title of District Court and Cause]

NOTICE OF APPEAL

Notice Is Hereby Given that Plaintiff Earle C. Anthony, Inc. hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Judgment of Dismissal for Lack of Jurisdiction, entered in this action on or about July 30, 1948, and from the whole thereof.

Dated: August 19, 1948.

OVERTON, LYMAN, PLUMB, PRINCE
& VERMILLE

By Donald H. Ford

Attorneys for Plaintiff.

[Endorsed]: Mld. copies to Otto A. Jacobs & R. M. Crookshank, Attys. for Defts. Filed Aug. 25, 1948. Edmund L. Smith, Clerk. [23]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 26, inclusive, contain full, true and correct copies of Complaint for Damages; Notice of Motion to Dismiss; Appearance on Motion to Dismiss; Memorandum Opinion; Judgment of Dismissal for Lack of Jurisdiction; Notice of Appeal and Designation of Record on Appeal which constitute the record on appeal to the Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$7.60 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23rd day of September, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Endorsed]: No. 12047. United States Court of Appeals for the Ninth Circuit. Earle C. Anthony, Inc., Appellant, vs. Kenneth E. Morrison and The Voice of the Orange Empire, Inc., Ltd., Appellees. Transcript of Record. Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed September 25, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 12047

EARLE C. ANTHONY, INC.,

Appellant,

vs.

KENNETH E. MORRISON, and THE VOICE OF
THE ORANGE EMPIRE, INC., LTD., a corpo-
ration,

Appellees.

STATEMENT OF POINTS UPON WHICH AP-
PELLANT INTENDS TO RELY, AND DESIG-
NATION OF THE RECORD NECESSARY
FOR CONSIDERATION OF SUCH POINTS

Comes now Earle C. Anthony, Inc., Appellant herein,
and states the points upon which it proposes to rely and
designates the parts of the record it believes necessary
for the consideration thereof.

I.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

A. That the complaint on file states a cause of action
against Appellees and each of them.

B. That the causes of action stated in said complaint
are within the jurisdiction of the Federal District Court.

C. That the Federal District Court had jurisdiction
over the subject matter.

D. That Appellant has been deprived of equal pro-
tection of the law.

E. That Appellant has been denied its property with-
out due process of law.

F. That Appellant has been deprived of freedom of speech and of the press.

G. That Appellant has been denied its right to engage in interstate and foreign commerce.

H. That the complaint states a cause of action for conspiracy against Appellees to deprive Appellant of its right to freedom of the press, equal protection of the laws, its property without due process of law and its right to engage in interstate and foreign commerce.

I. That a Judge of the Superior Court of the State of California is an instrumentality of the State and a judge acting in his official capacity cannot grant special privileges to one news gathering agency to the exclusion of others.

II.

DESIGNATION OF RECORD

As to all statements of points upon which Appellant intends to rely, it designates as the portions of the record necessary for consideration of such points:

The complete record, including the complaint, memorandum opinion rendered July 19th, 1948, judgment of dismissal dated July 30th, 1948 and notice of appeal.

Dated: September 22nd, 1948.

Respectfully submitted,

OVERTON, LYMAN, PLUMB, PRINCE
& VERMILLE

EUGENE OVERTON and
DONALD H. FORD

By Donald H. Ford

Attorneys for Appellant Earle C. Anthony, Inc.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 25, 1948. Paul P. O'Brien,
Clerk.

